1942.

File No. O. Smoke Nuisance 42.

Legal **DEPARTMENT**

"A" **BRANCH** p2(E)

Subject:—

Opinions under the Bombay Smoke Nuisances Act, 1912.

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		Opinions under the D'bay Smoke Nuisances Act, 1933.	
1/	O. No. 9214/10/11/42.	Re: Constitution of Commission under Sec. 4(1). Appointment of a member to the - by Municipality whether a person appointed by the Municipality as a member ceases to ~~be~~ as when the Municipality is superseded. Rule 10(b) of the ~~Smoke~~ Smoke Nuisance Rules.	

Madhav Menon.
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Office of the R.L.A.

By Government Notification, Political and Services Department No. 20/9 dated 26th November 1941, the Bombay Smoke ~~Nuisance~~ Nuisance Commission was constituted under section 4(1) of the Bombay Smoke Nuisances Act, 1912, for two years with effect from the 1st January 1942, and Dr.H.V. Desai, having been elected by the Ahmedabad Municipality, was appointed thereto The question for the consideration of the R.L.A. is whether Dr Desai has ceased to be a member of the Commission by reason of the fact that the Municipality has been superseded.

2. It is not clear from the papers whether Dr. Desai is in Jail or still free to attend to his duties as a member of the Smoke Nuisance Commission. If he is in jail and unable to attend to his duties then rule 15(b) of the Smoke Nuisance Rules will operate in which case the initiative will have to be taken by the President of the commission and he will have to report the fact to the Government with a request that steps be taken for filling up the vacancy. In such event it would be open to the Administrator, Ahmedabd Municipality to nominate Dr. Seervai as the representative of the Municipality on the Commission. But if Dr. Desai is not in Jail and is still able to attend to his duties as member of the Commission, the he cannot be held to become functus office merely by reason of the supersession of the Municipality. In the first place an elected representative of the Municipality need not necessarily be a councillor. The Municipality can elect any one as its representative on the Commission. His tenure on the Commission does not depend upon the life of the Municipality but upon the period which the Provincial Government may fix in that behalf. By the Government Notification of 26th December 1941 the period of appointment of the members has been fixed from 1st January 1942 to 31st December 1943. So unless Dr. Desai remains absent or is likely to be absent for more than 3 months, thereby causing a casual vacancy, he cannot be removed from membership of the Commission merely on account of the supersession of the Municipality

Sd/- P.N.M.
14/11
Superintendent of Legal Affairs.

U.R. to P.S S.D.H.-921/dated the 16th Nov. 1942.

K.R.D.
4-11-42
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